

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4289 OF 2016

Prabhakar Govind Tawade and Anr. ...Petitioners
vs.
Sanjay Manohar Tawade and Ors. ...Respondents

Ms. Deepa Punde i/b. Mr. S.S. Punde, for the Petitioners
Mr. Satish Raut i/b. Mr. S.C. Mangle, for Respondent Nos. 22 and 34.

CORAM : M. S. SONAK, J.

DATE : MARCH 20, 2019

P.C.:

. Heard Ms. Punde, learned counsel for the Petitioners and Mr. Raut, learned counsel for Respondent Nos. 22 & 34.

2. The challenge in this Petition is to the order dated 2nd May, 2015 passed by the learned trial Judge by which the learned trial Judge has partly rejected the Petitioner's application for appointment of the Court Commissioner. By the impugned order, the Court Commissioner has been appointed to hold auction in respect of 19 mango trees though the claim of the Petitioners was in respect of 100 mango trees which exists in the suit property. Ms. Punde submits that the suit is for partition. In the suit property, there are almost 100 mango trees. She submits that the learned

trial Judge has therefore erred in appointment of Court Commissioner to conduct auction in respect of only 19 mango trees.

3. From the perusal of the impugned order, it transpires that the learned trial Court has reasoned that there is no dispute in so far as the mango trees are concerned. The order states that there is no clarity with regard to extension of 100 mango trees and in any case since the partition in respect of varied properties, there are particulars available in respect of status of the mango trees i.e. how many mango trees are available in each of the properties. This is a discretionary order and it cannot be said that the discretion has been exercised unreasonably. Besides it cannot be said that the impugned order is in excess of jurisdiction particularly since a portion of the order is in favour of the Petitioners.

4. Accordingly, no case is made out to interfere with the impugned order. However, since the suit is pending since 2015 it is only appropriate that directions are issued to the learned trial Judge to dispose of the suit as expeditiously as possible.

5. Accordingly, this Petition is dismissed.

6. However, learned trial Judge is directed to dispose of the main suit as expeditiously as possible but in any case within a

period of one year from the date of production of authenticated copy of this order.

7. The parties to file an authenticated copy of this order before the learned trial Judge on the next date of hearing.

8. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)